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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,528	03/01/2004	Mark Dickstein	REL-8403	3371
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LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			HUYNH, KHOA D	
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DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/791,528	Applicant(s) DICKSTEIN, MARK	
	Examiner Khoan D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/1/04 & 5/25/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fabric layer defining the interior side as recited in claim 31 and the imprinted fabric layer as recited in claim 32 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 20, 21, 23, 24, 25, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asack et al. (D455479) in view of Henry (2319603).

Regarding claim 1, the Asack et al. reference discloses a disposable bathtub liner (Fig. 1). The liner, as schematically shown in Figure 1, includes a liner having an exterior side, an interior side, a bottom and sidewalls and is being removably disposed in the bathtub.

The Asack et al. reference DIFFERS in that the liner does not specifically include a fastener as claimed. Attention, however, is directed to the Henry reference which discloses a liner (7) for a bathtub. The liner includes a fastener (at 8-10 or 24-27) located on the exterior side of the liner for attaching the liner to the bathtub. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Asack et al. reference by employing a fastener, in view of the teaching of Henry, in order to attach the liner to the wall of the bathtub and hold it in place.

The Asack et al. reference also DIFFERS in that it does not specifically disclose that the sidewalls of the liner being less than 2 inches high as claimed. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to employ such dimension for the sidewalls of the liner since discovering an optimum value for the dimension of the sidewall of a liner involves only routine skill in the art.

Regarding claim 2, it is inherent that the liner is being removed from the bathtub by disengaging the fastener from the bathtub.

Regarding claim 3, the modified Asack et al. reference also DIFFERS in that it does not specifically disclose that the fastener is an adhesive having an adhesive cover as claimed. Attention, however, is also directed to the Henry reference which further discloses that the adhesive strip (at 8-10 or 24-27) having a cover (at 11), wherein at the time of applying the liner to the bathtub, the cover is pulled away from the tacky surface of the adhesive and the liner can be adhesively connected to the bathtub. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Asack et al. reference by employing a cover for the adhesive, in view of the teaching of Henry, in order to maintain the adhesive in a tacky condition and protect the adhesive from dirt until time for installing the liner.

Regarding claims 4 and 5, the adhesive is in a form of adhesive strips or patches disposed spaced apart on the exterior side of the liner (in Henry, elements 8-10 or 24-27).

Regarding claim 6, the Henry reference also discloses that the adhesive strips extend beyond the liner for attachment to the bathtub (page 1, left col., lines 49-54).

Regarding claims 20 and 21, the modified Asack et al. reference DIFFERS in that it does not specifically disclose that the liner is less than 1/32 and 1/64 inches thick as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such thickness for the liner since discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 23, the modified Asack et al. reference DIFFERS in that it does not specifically disclose that the liner is coated with a material as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to coat the liner with a material such as a scent because it is well within the general skill of a worker in the art to select a preferred enjoyable scent on the basis of its suitability for its intended use as a matter of obvious design choice (see cited US 2003/0024039 & DE 4119949).

Claim 24 recites limitations similar to the limitations of claims 1 and 3 which have been rejected as discussed supra.

Claim 25 recites limitations that are substantially similar to the limitations of claim 1 which has been rejected as discussed supra.

Claim 29 recites limitations that are substantially similar to the limitations of claim 3 which has been rejected as discussed supra.

Claim 30 recites limitations that are substantially similar to the limitations of claim 4 which has been rejected as discussed supra.

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4. Claims 7-10, 16-18, 19, 26, 28, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Asack et al. (as discussed supra) in view of Spier (3133292).

Regarding claim 7, the modified Asack et al. reference DIFFERS in that it does not specifically disclose that the bottom of the liner is formed of a water impervious material as claimed. Attention, however, is also directed to the Spier reference which discloses a liner assembly for bathtubs. The liner assembly includes a liner (33) having an exterior side, an interior side, a bottom and sidewalls. The bottom layer of the liner (33) is formed of a water impervious material (col. 2, lines 29-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Asack et al. reference by forming a bottom layer of the liner with an impervious material, in view of the teaching of Spier, to provide a liner that is capable of holding water during use.

Regarding claim 8, the modified Asack et al. reference also DIFFERS in that it does not specifically include a water impervious bottom of the liner and a mat as claimed. Attention, however, is also directed to the Spier reference which discloses a liner assembly for bathtubs. The modified liner is formed of a water impervious material (col. 2, lines 29-30 of Spier) defining the exterior side of the liner and a foam layer or mat (at 40 of Spier) disposed on at least part of the water impervious material defining the bottom (Fig. 2 of Spier). Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to have modified the modified Asack et al. reference by forming a bottom layer of the liner with an impervious material and providing a mat, in view of the teaching of Spier, to provide a liner that is capable of holding water and providing a cushion to a user during use.

Regarding claim 9, as schematically shown in Figures 2 and 3, the water impervious layer (at 36 of Spier) fully encloses the mat in a sandwich type format (the mat sandwiched between the ends of the layer 26).

Regarding claim 10, the water impervious surface has a roughed surface (at 38 of Spier) for providing anti-slippage properties.

Regarding claim 16, the liner further includes a surface with decorative pattern (col. 2, lines 26-29 of Spier).

Regarding claim 17, the modified Asack et al. reference DIFFERS in that it does not specifically disclose a surface with animal shapes as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to emboss such surface with animal shapes since it is well within the general skill of a worker in the art to select a preferred interactive surface with picture of animal or cartoon characters on the basis of its suitability for its intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 18, the sidewalls are also formed from the water impervious material (Fig. 3 of Spier) but do not include the mat.

Regarding claim 19, the water impervious material is a plastic (col. 2, lines 19-26 of Spier) and the mat is formed of a foam rubber or sponge material (col. 2, line 20-22 and 35-40 of Spier).

Regarding claim 26, the modified Asack et al. reference DIFFERS in that it does not specifically disclose that the liner has a rectangular shape as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize such shape for a liner because it is well within the general skill of a worker in the art to select a preferred shape on the basis of its suitability for its intended use as a matter of obvious design choice especially since a) applicant does not disclose any specific advantage of why the liner has to be have a rectangular shape and b) Spier does disclose that the liner can be of any shape and size in accordance with the needs of the user.

Regarding claim 28, the modified Asack et al. reference also DIFFERS in that it does not specifically include a hole for drainage as claimed. Attention, however, is also directed to the Spier reference which discloses a liner assembly for bathtubs. The liner has a hole (45) formed therein functioning as a drain. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Asack et al. reference by employing a hole (if not already) functioning as a drain, in view of the teaching of Spier, to provide a convenient water drain to empty the used water before the liner can be removed.

Regarding claim 31 and 32, the liner is formed of a water resistance layer (at 36 of Spier) defining the exterior side and a fabric layer defining the interior side, wherein the fabric layer is an imprinted fabric layer (col. 2, lines 23-35 of Spier).

5. Claims 11-13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Asack et al. (as discussed supra) in view of Bleicher (5465436).

Regarding claim 11, the modified Asack et al. liner also includes a hole formed therein in the area of the drain. The modified Asack et al. reference DIFFERS in that it does not specifically include a drain cover as claimed. Attention, however, is directed to the Bleicher reference which discloses another liner (10) for a bathtub. The liner includes a drain hole (32) and a drain cover (36). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Asack et al. reference by employing a drain cover (if not already) for the drain hole of the liner, in view of the teaching of Bleicher, so that water can be hold in the liner for bathing purposes.

Regarding claims 12, 13 and 22, the modified Asack et al. reference also DIFFERS in that it does not specifically include a ripcord disposed around the hole as claimed. Attention, however, is also directed to the Bleicher reference which discloses a ripcord (40) connected to the drain cover and disposed around the circumference of the hole (Fig. 7A, 7B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have modified the modified Asack et al. reference by employing a ripcord, in view of the teaching of Bleicher, in order to allow the user to open the drain hole to drain water without coming into contact with the used water in the bathtub.

6. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Asack et al. (as discussed supra) in view of Lotis (4047259).

Regarding claims 14 and 15, the modified Asack et al. reference DIFFERS in that it does not specifically include a dispenser as claimed. Attention, however, is directed to the Lotis reference which discloses a mat or liner (10) for a bathtub. The mat or liner includes a soap container or dispenser (14) attached to the side of the mat or liner. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Asack et al. reference by employing a dispenser attached to the liner, in view of the teaching of Lotis, to provide a convenient soap dispensing location for the user during bath.

Response to Amendment

7. Applicant's amendment, filed on 05/25/05, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

8. Applicant's arguments filed on 05/25/2005 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that Spier does not teach a disposable liner as claimed in the amended claims 1, 24 and 25. See Remarks section, page 13.

Nevertheless, such assertions are now moot in view of the new grounds of rejection rejected under 35 U.S.C. 103(a) as being unpatentable over Asack et al. (D455479) in view of Henry (2319603) as discussed supra.

Also applicant's arguments with respect to claims 1-26 and 28-32 have been considered but are moot in view of the new grounds of rejections and objections as discussed above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
08/04/05